Supreme Court, U.S.
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No. 03-971

IN THE
SUPREME COURT OF THE UNITED STATES

Isidoro Rodriguez, Esq.,

Petitioner,

v.

HFP INC.; IOTA Partners; Jack Harbeston; Edris E. Harbeston; Jerome Barron; Sea Search Armada; Armada Company; Danilo Davis Pereira; John Does 1-20; Murdock & Company; Dave LaRocue; Don Middlebrook; Ed Carpenter; and John Does Entities 1-6,

Respondents.

On Petition For Writ of Certiorari
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Isidoro Rodriguez, Esq.
THE LAW OFFICES OF
RODRIGUEZ & SIBLEY L.L.P.
2304 Farrington Avenue
Alexandria, Virginia 22303-1520
(703)960-0225
E-Mail: isidoror@EarthLink.net

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

Federal Courts have limited personal and subject matter jurisdiction. They can only hear cases that fall both within the scope defined by the United States Constitution in Article III Section 2, and Congressional statutes. In this diversity action under 28 U.S.C. § 1332, the unpublished opinions of the Court of Appeals for the Fourth Circuit and District Court for the Eastern District of Virginia's ignore the mandate of 28 U.S.C. § 1738 and § 2072(b), as well as the *Erie* doctrine, therefore raising three substantial federal questions that warrant immediate review by this Court:

I. Whether the lower federal courts acted outside of their limited jurisdiction by issuing unpublished opinions that were in noncompliance with the mandate of 28 U.S.C. § 1738, by ignoring VA Code § 54.1-3932 and controlling case law regarding the enforcement of Petitioner's Virginia statutory Attorney's Lien and the protection against a business conspiracy pursuant to Va Code § 18.2-500?

II. Whether the lower federal courts acted outside their limited jurisdiction in violation of the 28 U.S.C. § 2072(b), by their repeated use of unpublished decisions depriving Petitioner of his substantive property right in his Virginia Attorney's Lien, and damages for a business conspiracy?

III. Whether the lower federal courts acted outside their limited jurisdiction by repeatedly using unpublished decisions to deny Petitioner of his right to due process and equal protection of the laws of Virginia?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Isidoro Rodriguez, Esq. (" Rodriguez"), prays that a writ of certiorari be issued to review the unpublished judgment and opinion of the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"), entered in this proceeding on October 10, 2003.

CITATIONS TO UNPUBLISHED OPINIONS BELOW

The unpublished opinion of the Fourth Circuit, No. 03-1084, October 10, 2003, is reprinted at A-1;[1] The unpublished transcript of hearing and opinion of Hon. Judge Gerald Bruce Lee, U.S. District Court of the E. D. of Virginia, No. 02-1523-A, dated December 13, 2002, is reprinted at A-3.

The unpublished order of the Fourth Circuit, denying a Petition for Rehearing En Banc, No. 01-1884, January 18, 2002, is reprinted at A-24. The unpublished opinion of the Fourth Circuit No. 01-1884, November 28, 2001, is reprinted at A-25. The unpublished opinion of the Fourth Circuit No. 01-1774, July 26, 2001, denying a Petition for Writ of Mandamus to the Hon. Judge Gerald Bruce Lee, U.S. District Court of the E. D. of Virginia is reprinted at A-27. The unpublished orders of the Fourth Circuit No. 01-1671, June 12, 2001, and July 24, 2001, denying a Petition for Writ of Mandamus to the Hon. Judge James C. Cachceris, U. S. District Court of the E. D. of Virginia are reprinted respectively at A-29. The unpublished orders of the Fourth Circuit No. 01-1129, dated June 19, 2001, and May 14, 2001, dismissing an Interlocutory Appeal of the December 20, 2000 order, are reprinted at A-30. The unpublished Order

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[1] "A-" references are to pages in the separate bound Appendix.

and Memorandum of the Hon. Judge Gerald Bruce Lee, U. S. District Court for the E. D. of Virginia, No. 00CV1523-A, June 5, 2001, dismissing the Complaint as to Defendant Danilo Davis Pereira, is reprinted at A-31. The unpublished Report and Recommendation of the Hon. Magistrate Judge Theresa Carroll Buchanan of the U. S. District Court for the E. D. of Virginia, No. 00CV1523-A, April 25, 2001, is reprinted at A-40. The unpublished bench opinion and order of the Hon. Judge James C. Cachceris of the U. S. District Court for the E. D. of Virginia, No. 00CV1523-A, December 20 and 21, 2000, dismissing the Complaint as to Defendants Jack Harbeston, Sea Search Armada, Armada Company, and IOTA Partners, are reprinted at A-46.

The Virginia Bar Legal Ethics Opinion #1325, February 27, 1990, confirming Rodriguez's right to enforce his Virginia Attorney's Lien is reprinted at A-58.

STATEMENT OF JURISDICTION

The unpublished opinion of the Fourth Circuit was entered on October 10, 2003 (A-1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and § 2072.

U.S. AND VIRGINIA CONSTITUTION, FEDERAL AND VIRGINIA STATUTORY PROVISIONS INVOLVED
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STATEMENT OF THE CASE

This action was filed on October 15, 2002, in the United States District Court for the Eastern District of Virginia, Alexandria based on diversity of citizenship pursuant to 28 U.S.C. § 1332, § 1738, § 2072, and Virginia's Long Arm Statute, VA Code § 8.01-328.1(A)(1),(3), and (4). The action sought to enforce Rodriguez's Virginia Attorney's Lien under VA Code §54.1-3932 and controlling decisions of the Virginia Supreme Court, based on the fraudulent dissolution of Sea Search-Armada and Armada Company in mid-2002, pursuant to VA Code § 18.2-499 and 500, and to protect Rodriguez's business and profession from a business conspiracy.

i. SSA Entities purposefully availed themselves of the protections of the laws of Virginia.

On June 2, 1988, former Congressman and subsequently the chief lobbyist and negotiator for SSA Entities (Addendum "a"),[2] Mr. Guy Vander Jagt, Esq., lobbied

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[2]SSA Entities are the finder claimants to 25 sunken treasure troves targets valued at $3 to $10 Billion, off of the coast of the Colombia, including the 1707 Spanish Galleon *San Jose ("Treasure Trove"), (MAXIM,*

the U.S. Congress against the "Colombian expropriation of vested right of the Sea Search-Armada."

So to protect SSA Entities contract rights, shortly thereafter in September 1988, on behalf of Sea Search-Armada, and before the formation of IOTA Partners, Harbeston in Idaho, entered into both verbal and written contracts with Rodriguez for him to serve as the Legal Representative of Sea Search-Armada in Colombia, specifically because he was a Virginia Attorney. Based on Rodriguez assured fidelity as a Virginia attorney the Board of Directors on December 15, 1988, delegated all of their corporate powers and authority to Rodriguez as their "Lawyer and agent in Colombia."[3]

On behalf of SSA Entities, Rodriguez on January 8, 1989, filed an against Colombia that has been described by Congressmen Benjamin A. Gilman, Dan Burton, and Phil M.

Colombian Gold, July 2003). Defendant IOTA Partners LP, is an Idaho limited partnership organized by Jack Harbeston ("Harbeston") on October 22, 1988, for the sole purpose of the "salvage of treasure trove in or about Colombia," which is owned by Sea Search-Armada and Armada Company (Addendum "a"). Defendant HFP, Inc., is owned by Harbeston and incorporated in the State of Washington, to serve as the General Partner of IOTA Partners LP. Thus these entities are either owned or controlled by Harbeston, and with their alter ego and shell corporations comprise.

3 Under Colombian law a "Legal Representative" is a term designating an individual given wide fiduciary corporate authority directly from the Board of Directors of an entity. This was critical for SSA Entities to obtain jurisdiction to sue Colombia on its contract claim, thus it delegated the full power of the Board of Director's of Sea Search-Armada and Armada Company to Rodriguez in Colombia, including the power to settle their claims.

Crane, as the "largest private claim by American citizens against a foreign state pending in the world."

Due to the nonpayment of numerous invoices by SSA Entities, Rodriguez obtained on February 27, 1990, a VA Legal Ethics Opinion #1325,[4] to enforce his Virginia statutory Attorney's Lien against SSA Entities, which stated,

> . . . [Rodriguez being] admitted to practice in Virginia is subject to the Virginia Code of Professional Responsibility although engaged in practice elsewhere . . . when [he] assumes the responsibility of acting as a fiduciary . . . As such Rodriguez's suit for Attorney fees is permissible. (A-58)

After 1993, in compliance with his fiduciary duty to SSA Entities, Rodriguez was required to reside in the dangerous country of Colombia. In 1998, after SSA Entities prevailed in the Court of Appeals in Colombia, the Colombian Government made an offer to settle, and Rodriguez as Legal Representative submitted SSA Entities's counteroffer, which Mr. Guy Vander Jagt as chief lobbyist to Congress, negotiated on behalf of SSA Entities.

After Congress passed "Plan Colombia" in 1999, involving the transfer to Colombia of over $2 Billion, including $300 million dollars of "soft money," on April 6, 2000, without any apparent authorization of the Board of Directors, Harbeston sent a letter from the State of Wash-

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[4] Consistent with Virginia Bar Ethics Opinions and VA Code § 54.1.3932, Rodriguez has an Attorney's Lien of $4.5 million based on *quantum merit*, for his more than twelve years of *pro hoc vice* fiduciary and legal management services as Legal Representative and managing attorney for Sea Search-Armada and Armada Company.

ington to Rodriguez at his office in Alexandria, Virginia, unilaterally terminating Rodriguez and stated that, "neither Sea Search-Armada nor its related entities and individuals owe [Rodriguez] anything for past, present, or future fees."

Subsequently, while still having an outstanding claim to the *Treasure Trove*, in April and June of 2002, Sea Search-Armada and Armada Company conspired to dissolve and transfer their interest to SSA Entities, and thereby damage Rodriguez's business and profession by fraudulently avoiding Rodriguez's Virginia statutory Attorney's Lien and rights as a statutory creditor. *See Isidoro Rodriguez, Esq. v. Guy Vander Jagt, et al.*, Fairfax County Circuit Court, Law No. 215327 (Wooldrige, J.).[5]

ii. Proceedings in lower federal courts

Upon giving notice, Rodriguez filed on September 12, 2000, a declaratory judgment action based on Virginia Supreme Court precedent and VA Code § 54.1-3932, in the United States District Court for the Eastern District of Virginia, *Rodriguez v. Harbeston et al.*, No. 00CV1523 (Cachceris, J). In unpublished decisions (A-24, A-25, A-27, A-29, A-30, A-31, A-40, and 46), the Fourth Circuit and the District Court refused to provide any meaningful hearing or even refer to VA Code § 54.1-3932, which was the grava-

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[5] After the unpublished order of the Fourth Circuit was issued on October 10, 2003, an Amended Motion for Judgment ("AMFJ") was filed November 14, 2003, in the Fairfax County Circuit Court against SSA Entities, their chief lobbyist and negotiator Mr. Guy Vander Jagt, their attorney Mr. Harrison Ledger, and John Does, to enforce Rodriguez's Virginia Attorney's Lien, and to protect Rodriguez business and profession for a business conspiracy based on his his rights as a statutory creditor and the fraudulent dissolution of Sea Search-Armada and Armada Company.

men of the complaint. Instead the federal courts solely based their unpublished opinions on contract law, intentionally disregarding the mandate of both the 28 U.S.C. § 1738 and §2072, so to not follow the controlling precedents and law of Virginia as to Rodriguez substantive property rights in his Virginia statutory Attorney's Lien.[6]

On October 15, 2002, Rodriguez filed the instant action to specifically enforce and protect his Virginia statutory property right, including from a malicious business conspiracy, *Rodriguez v. HFP, Inc., et al.* U.S. Dist. Ct. E.D. Va. 02CV1523 (Lee, J). On December 13, 2002, Judge Lee in an unpublished opinion disregarded Rodriguez's Virginia statutory rights pursuant to VA Code § 54.1-3932 and VA Code § 18.2-500 (based only on the earlier unpublished order of Judge Cachceris), and refused to certify the question of Virginia law to the Supreme Court of Virginia as being "advisory" in violation of Article III of the Constitution (A-5 and A-22). On October 10, 2003, the Fourth Circuit, No. 03-1084, affirmed in an unpublished opinion (A-1).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

This Court's review of the Fourth Circuit's unpublished decisions is warranted because the Fourth Circuit, (i) "has decided an important federal question in a

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[6]Because the surreal nature of the unpublished decisions provided a *prima facie* case of political skulduggery, Rodriguez filed a Judicial Complaint under 28 U.S.C. § 372, CA4C No. 02-9008, against the various federal judges for acting outside of their jurisdiction (Judicial immunity is limited when judges act in the "clear absence of all jurisdiction" *Stump v. Sparkman*, 435 U.S. 349 at 357 (1978)). This administrative complaint was denied without comment in 2002.

way that conflicts with a decision by a state court of last resort;" and, (ii) "has so far departed from the accepted and usual course of proceedings, and sanctioned such a departure by a lower federal court, as to call for an exercise of this Court's supervisory power" Sup. Ct. R. 10 (a).[7]

I BY USING UNPUBLISHED OPINIONS TO NOT COMPLY WITH THE MANDATE OF 28 U.S.C. § 1738, THE FOURTH CIRCUIT AND DISTRICT COURT HAVE REPEATEDLY ACTED OUTSIDE OF THEIR LIMITED JURISDICTION.

Regarding the enforcement and protection of a VA Attorney's Lien, the Supreme Court of Virginia has held that the language of VA Code § 54.1-3932, is " . . . **broad and permits no interpretation limiting the benefits of the statute to Virginia lawyers. . . .**"(Emphasis added). *Hughes v. Cole,* 251 Va. 3 at 27, 465 S.E.2d 820 (1996).

> The law is clear that `when . . . an attorney employed under a contingent fee contract is discharged without just cause . . . the discharged attorney is entitled to a fee based upon *quantum merit* for services rendered prior to discharge and, as security for such fees, to the lien granted by [VA Code § 54.1-3932].'(citation omitted). *Hughes v. Cole* 251 Va. at 23.

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The insidious danger and abuses of the use of unpublished decisions as the Fourth Circuit and District Court have done is re-enforced by the criteria used by this Court in granting Certiorari, S. Ct Rule 10. Thus arguably a federal courts abuse will not be reviewed given that an unpublished decision has no store decisis effect, thereby it will never reach any of the threshold consideration used for granting a Writ.

Based on the clear reading of Va. Code § 54.1-3932, as well as controlling case law and the VA Legal Ethics Opinions,[8] when Rodriguez as a Virginia attorney was discharged by SSA Entities prior to the completion of the representation he has an inviolate right to recover the reasonable value of his services that he rendered for twelve years to SSA Entities based on *quantum merit*. *See Virginia Lawyer Register*, March 2003, Vol 51/No. 8, p. 13 ¶17, the Official Publication of the Virginia State Bar; VA Legal Ethics Opinion No. 1606 and No. 1766; *See also,* VA. Code § 54.1-3932; and *Heinzman v. Fine, Fine, Legum & Fine*, 217Va. 958, 234 S.E.2d 282 (1977).

This inviolate right exist because Virginia has the undisputed interest in protecting Rodriguez's ability to be paid for *pro hoc vice* legal services rendered outside of Virginia–there is no contrary interest to suggest that Virginia's public policies should not control based on equal protection and the Art. IV, sec. 2 of the Constitution, the "privileges and immunities clause," *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985).[9] *See In the Matter of Istem, Inc., Res-*

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[8] VA Legal Ethics Opinion issued to Rodriguez (A-58), importantly stated that although "engaged in practice elsewhere" outside of Virginia, at all times Rodriguez's fidelity to his *pro hoc vice* fiduciary and legal duty as Legal Representative of SSA Entities was governed by the Virginia State Bar, the administrative agency of the Virginia Supreme Court, and to "prevent fraud or gross imposition" Rodriguez, has the right to sue for his fee. Thus under VA Code Ann. § 54.1-3910, it is "incorporated into the Code of Virginia," and has legal force and effect of the Va Code. *See also,* 15 VAC 5-40-360. Committee on Legal Ethics.

[9]Also any decision to not enforce Rodriguez's VA Attorney's Lien for his *pro hoc vice* fiduciary services would be an impermissible burden on interstate commerce, and an unlawful usurpation of the power granted

pondent v.. Chemical Bank Respondent, and Wilkie Farr Gallagher, Appellant, 78 N.Y.2d 342, 581 N.E.2d 1042, 575 N.Y.S.2d 796 (1991).

Therefore Rodriguez has established a *prima facie* basis of general personal jurisdiction, and any challenge to personal jurisdiction is barred by the *Rooker-Feldman* doctrine.[10] *See also, Allstate Insurance v. West Virginia State Bar*, 233 F.3d 81 (4th Cir. 2000).

For these reasons the Fourth Circuit and the District Court's unpublished opinions (A-1, A-3, A-24, A-25, A-27 A-29, A-30, A-31, A-40, and A-46), which intentionally neither addressed nor cited at all either controlling Virginia statute or case law anywhere in the combined 57 pages of the Appendix, violated 28 U.S.C.A. § 1738, by being based only on contract law analysis and not the statutory rights of Rodriguez.[11]

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only Congress to regulate Commerce pursuant to Art. I, Section 8, cl. 3, *See Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948).

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District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1983), establish the fact that lower federal courts do not have jurisdiction to conduct direct review of state court decisions . *Rooker* 263 U.S. at 416; *Feldman* 460 U.S. at 482.

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It is for this reason Judge Lee's hypothetical did not deal with either the facts or law at issue (A-18), since there is a great difference between a cause of action based on an "at-will employment" agreement, and an action to enforce a Virginia statutory Attorney's Lien. The former is based only on rights under common law contract theory, the latter is based on a public policy right given specifically by the Virginia legislature, which the Virginia Supreme Court has held "permits no interpretation limiting the benefits of the statute to a Virginia Attorney." Thus although Virginia strongly adheres to the common law employment-at-will doctrine, *see Lawrence Chrysler Plymouth Corp. v. Brooks*, 251 Va. 94, 97,

II. IN USING UNPUBLISHED DECISIONS THE FEDERAL COURT HAVE ACTED OUTSIDE THEIR LIMITED JURISDICTION IN VIOLATION OF 28 U.S.C. § 2072, TO DEPRIVE RODRIGUEZ OF HIS SUBSTANTIVE PROPERTY RIGHTS IN HIS VIRGINIA ATTORNEY'S LIEN

Here Rodriguez's Virginia statutory Attorney's Lien, VA Code § 54.1-3932, on the *Treasure Trove* claimed by SSA Entities, came into existence immediately upon making of the verbal and written contracts with SSA Entities. *Fary v. Aquino*, 218 Va. 889, 241 S.E. 2d 799 (1978); *Ruebush v. Funk*, 63 F.2d. 170 (4th Cir. 1933); *Tignor v. Parkison*, 729 F.2d. 977 (4th Cir. 1984). Also Rodriguez's Virginia Attorney's Lien VA Code § 54.1-3932, makes him a party in interest in the contract litigation against Colombia. *Katopodis V. Liberian S/T Olympic Sun*, 282 F.Supp. 369 (E.D. Va 1968); and his Virginia Attorney's Lien VA Code § 54.1-3932, remains inchoate until judgement or recovery is obtained. *Montavon v. United States*, 864 F.Supp. 519 (E.D. Va. 1994). Finally, since Rodriguez was discharged without just cause by SSA Entities, and he is entitled to a fee based on *quantum merit* for the twelve years of service rendered for the period of September 15, 1988 to April 6, 2000.

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465 S.E.2d 806, 808 (1996)(quoting *Miller v. SEAVAMP, Inc.*, 234 Va. 462, 465, 362 S.E.2d 915, 916-17 (1987)(citations omitted)), Virginia courts have held that the common law employment-at-will doctrine is not absolute, and has recognized as here a public policy exceptions to this doctrine, *see Bowman v. State Bank of Keysville*, 229 Va. 534, 540, 331 S.E.2d 797, 801 (1985). In the instant action Rodriguez identified specific Virginia statutes in which the General Assembly had established public policies that SSA Entities *et al.*, have contravened--the public policy to assure that a Virginia attorney is paid for his work. *Lawrence Chrysler Plymouth Corp. v. Brooks*, 251 Va. at 98-99, 465 S.E.2d at 809 (1997). *See also Bailey v. Scott-Gallaher, Inc.*, 253 Va. 121, 480 S.E.2d 502 (1997).

Heinzman v. Fine, Fine, Legum & Fine, 217Va. 958, 234 S.E.2d 282 (1977).

However, since 2000, in total disregard of the above cited Supreme Court of Virginia controlling precedent, as well as inconsistent with its own decisions, the Fourth Circuit and the District Court through the use of 10 unpublished decisions, has treated Rodriguez's Virginia statutory Attorney's Lien VA Code § 54.1-3932, under simple contract law, and thereby have unlawfully deprived Rodriguez of his substantive property rights in his Virginia Attorney's Lien, and Rodriguez's right to protect his business and profession from a business conspiracy.

It has been said that the primary justification for the use of unpublished decision is that an unpublished decision neither establishes a new rule of law, modifies existing rule of law, applies an existing rule to distinct fact, nor concerns any issue of significant public interest. 5th Cir. R. 47.5.1, *Williams v. Dallas Rapid Transit*, 256 F.3rd 260 at 261 (5th Cir. 2001)(see discussion of the dissent of Circuit Judge Smith, Jones, and DeMoss). However in the instant action not only do none of these justifications exist, but more importantly the Fourth Circuit and District Courts use of unpublished opinion failing to address in any manner Rodriguez's Virginia statutory rights, have effectively created the "Rodriguez exception" to Va Code § §54.1-3932 and VA Code § 18.2-499 and 500, and controlling precedent.

Relevant to this request for review by this Court of the use of unpublished opinions by the Fourth Circuit and the District Court to avoid following controlling precedent, are both the discussion of the dissent in *Williams v. Dallas Rapid Transit*, 256 F.3rd 260 (5th Cir. 2001), and *Anastasoff*

v. United State, 223 F.3d 898 (8th Cir. 2000). In *Anastasoff*, a panel of the U.S. Court of Appeals for the Eighth Circuit ruled that its own rule denying procedural effect to unpublished opinions was un-Constitutional. Although the *Anastasoff* ruling was later vacated as moot due to settlement of the underlying IRS claim (No. 99-3917EM, December 18, 2000), the decision is relevant in reviewing the unpublished decisions issued here, since according to *Anastasoff* 223 F.3d at 904, federal judges are bound to follow the law. To do otherwise, the Eight Circuit argued would invite judicial tyranny by freeing federal courts from the doctrine of precedent:

> A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles." *Id.* (quoting Joseph Story, Commentaries on the Constitution of the United States § 377 (1833)).

Consistent with this Constitutional principal, both 28 U.S.C. § 2072, and 28 U.S.C. § 1738, mandate that federal district courts, even in unpublished decisions, are bound to follow the substantive law of the state in which the court is sitting. The United States Supreme Court has held similarly. *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.E. 1188 (1938). As explained by Justice Felix Frankfurter in *Guaranty Trust Co. v. York*, 326 U.S. 99, 65 S.Ct. 1464, 89 LE 2079:

> The intent of the [*Erie*] decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of diversity of citizen-

ship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a state court. (Emphasis added)

Thus in accordance with 28 U.S.C. § 2072, 28 U.S.C. § 1738 *Erie*, neither the Fourth Circuit, nor Judge Lee, nor Judge Cachceris have the freedom to depart from, disregard, or modify existing Virginia decisional law and statute regarding the enforcement of Rodriguez's Va Attorney's Lien. *King v Order of United Commercial Travelers of America*, 333 U.S. 153, 68 S.Ct. 488, 92 L.E. 608 (1948). These Judges can neither seek to change what appears to be the present law, *Cantwell v. University of Massachusetts* 551 F.2d 879 (1st Cir. 1977), nor can these Judge "correct" a state court's interpretation of its own law, *Tarr .v. Manchester Insurance Corp.*, 544 F.2d 14 (1st Cir. 1976).

Put in the simplest terms 28 U.S.C. § 2072, 28 U.S.C. § 1738, and the *Erie* doctrine as developed requires the Fourth Circuit, Judge Lee and Judge Cachceris to apply Virginia's substantive laws in determining any issue or claim raised by Rodriguez which has its source under laws of Virginia–they cannot simply not address the argument in unpublished decisions on the false assumption that Rodriguez will not have the tenacity required to protect his Virginia statutory property rights. *Calder v. Jones* 465 U.S. 783 (1984); *Burger King v. Rudzewicz*, 471 U.S. 462 at 473 (1985); *Wein Air Alaska v. Brandt*, 195 F.3d 208 (5th Cir. 1999); *Reynolds v. International Amateur Athletic Fed'n*, 23 F.3d 1110, 1116 (6th Cir. 1994); *John R. Neal and Lea A. Neal v. Sjef Janseen*, 270 F3rd 328 (6th Cir. 2001); *Dollar Sav. Bank v. First Sec. Bank of Utah, N.A.*, 746 F.2d 208 (3d Cir 1984); *General Electric Company v. Deutz AG*, 270 F3d 144 (3rd Cir. 2001).

Similarly the repeated denial of motions to Certify the Question of Rodriguez's Virginia statutory rights to the Supreme Court of Virginia based on Judge Lee's unpublished opinion (A-5), that to seek Certification was only "advisory" in violation of Article III, was in error based on the clear wording of 28 U.S.C. § 2072, 28 U.S.C. § 1738, as well as the *Erie* doctrine. As the Seventh Circuit explained in *Allstate Insurance v. Menards, Inc*, 18 F.3d 1155 at 1161 (7th Cir. 2002), that to maintain the constitutional line between limited federal lawmaking power and state residual lawmaking power,

> *Erie* requires that the federal court follow an analytical path that ensures that the law applied in federal proceedings is the law that "ultimately would be applied were the case to be litigated in the state courts." *Roberts v. S. Life Ins. Co.*, 568 F. Supp. 536, 539-40 (N.D. Ill. 1983) (Emphasis added.

III. THE FEDERAL COURTS USE OF UNPUBLISHED OPINIONS HAVE UNLAWFULLY DEPRIVED RODRIGUEZ OF HIS SUBSTANTIVE PROPERTY RIGHTS AS A VIRGINIA ATTORNEY WITHOUT DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS OF VIRGINIA.

A review of all the proceedings and the unpublished orders of Fourth Circuit, Judge Lee and Judge Cachceris since December 2000, brings into focus that "[t]here is no crueler tyranny than that which is exercised under cover of law, and with the colors of justice ..." – *U.S. vs. Jannottie*, 673 F.2d 578, 614 (3d Cir. 1982).

The Fourth Circuit and the District Court cannot disregard both Rodriguez's Virginia statutory property right

in his Virginia Attorney's Lien, and right to protect his business and profession, as well as his fundamental rights as a citizens of the United States and the Commonwealth of Virginia to a fair and impartial hearing, without the ability of Rodriguez to challenge their actions, because it would give the federal courts unlimited power[12]–and this in itself is a violation of the Fifth Amendment to the U.S. Constitution.

Thus the different and discriminatory treatment given Rodriguez's Virginia statutory rights by the Fourth Circuit and District Court irrespective of the mandate of 28 U.S.C. § 2072, 28 U.S.C. § 1738, as well as the *Erie* doctrine, in total disregard of the controlling precedent of *Telco Communications v. An Apple a Day*, 977 F.Supp 404 at 407(E.D.Va. 1997), *Heinzman v. Fine, Fine, Legum & Fine*, 217Va. 958, 234 S.E.2d 282 (1977); *English & Smith v. Metzger*, 901 F.2d 36, 39 (4th Cir. 1990); *Katopodis v Liberian S/T Olympic Sun*, 282 F.Supp. 369 (E.D. Va. 1968), is a violation of Rodriguez's right to due process and equal protection of the laws under the Fifth Amendment. *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 108 S.Ct. 2260 (1988); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S.Ct. 1272 (1985).

a. Lack of Meaningful Hearing.

"The fundamental requirement of due process is the opportunity to be heard `at a meaningful time in a mean-

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It has been stated that, "[u]nlimited power is apt to corrupt the minds of those who possess it; and this I know, my lords, that where law ends, tyranny begins." Lord Chatham (William Pitt) to the British House of Lords in January 1770.

ingful manner.'" *Mathews v. Elridge*, 424 U.S. 319, at 333 (1967)(citation omitted).
Specifically, due process requires that Rodriguez: (1) be entitled to fact finding based on a record produced before the District Court, and not based on *ex parte* discussions or unpublished decisions; (2) be allowed to make and have addressed arguments regarding the applicability of his Virginia's Attorney's Lien and business conspiracy statue; and (3) have the right to an individualized determination on his claims under these statutes based on Supreme Court of Virginia precedent. *See Abdulai v. Ashcroft*, 239 F.3d 542 at 549 (3rd Cir. 2001).

Because none of the above requirements were met by the Fourth Circuit and the District Court unpublished opinions, Mr. Rodriguez's right to due process and equal protection under the law s of Virginia were violated.

For example, during oral argument on SSA Entities motion to dismiss on December 22, 2000, the Hon. Judge James C. Cachceris, specifically interrupted and prevented Mr. Rodriguez from discussing the two theories of the Complaint, i.e. enforcement and protection from tortious interference of his Virginia statutory Attorney's Lien, VA Code 54.1-3932–instead Judge Cachceris focus only on contract analysis (A-52). Also regarding the proceedings concerning Mr. Devis, neither the Report and Recommendation of Hon. Magistrate Judge Theresa Carroll Buhanan (A-40), nor the Final Order District Judge Gerald Bruce Lee (A-31), gave any consideration to either the counts in the Complaint or the record regarding the protection of Rodriguez's Attorney's Lien from tortious interference by his agent. In this context note that in Footnote 3 of Judge Lee's unpublished opinion of June 5, 2001 (A-38), although not

citing the either VA Code or case law, Judge Lee did find in dicta that the Virginia Bar Ethics Opinion did provide for an action against SSA Entities, but assumed away the cause of action based on tortious interference with said property interest.

b. Denial of right to Jury trial.

The Seventh Amendment to the United States Constitution and Section 11 of the Constitution of Virginia guarantees the right to a jury trial. Fed. R. Civ. P. Rule 38(a), states that the right of trial by jury as declared by the Seventh Amendment, or as given by a statute of the United States, is preserved to the parties "inviolate."

Where a preliminary challenge is made to a jurisdictional fact in an action and on an issue where trail by jury is a matter of right, the issue should not be adjudicated summarily but should be submitted for a jury determination. *Andreas v. Imperial Air Lines Inc.*, 211 F.Supp 311 (E.D. Pa. 1962).

As this Court held in *Ross v. Berhard* 396 U.S. 531, 90 S.Ct. 733 at 738 (1957), "there is a right to a jury trial on the legal claims which must not be infringed by trying the legal issues as incidental to the equitable ones or by a court trail of a common issue existing between the claims." Where determination of equitable issues arising out of the same transaction would be conclusive as to legal issues, the legal issues must be tried first. Prior non jury trial of the equitable issues could infringe the right to jury trial on the legal issues because of the *collateral estoppel* or *res judicata* effect of prior judicial determination of issues common to the two set of claims. *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948 (1959).

Therefor once the claim for money damages to enforce Rodriguez's Attorney's Lien and for the business conspiracy and tortious interference of said property rights were made, the District Court had the responsibility to analyze the nature of the claims and to try the legal claims before a jury first. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 82 S.Ct. 894 (1962).

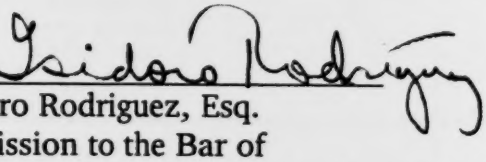
Thus when the District Court was in error to deny discovery and determine the jurisdiction on the Complaint, other pleadings and the affidavits without a jury. Because although the District Court may gather evidence on the question of personal jurisdiction by affidavit or otherwise, and based upon the evidence so obtained decide the jurisdictional dispute before trial, where the issue of jurisdiction is dependant upon a decision on the merits, the trial court should postpone determine of personal jurisdiction by proceeding to a decision on the merits before a jury, the purpose of such postponement being prevention of a summary decision on the merits without the ordinary incidents of a trial, including the right to jury. *See Schramm v. Oakes*, 352 F.2d 143, 149 (10th Cir. 1965).

CONCLUSION

This Petition challenges the Fourth Circuit and the District Court's use of unpublished decisions to act outside of their limited jurisdiction and authority by refusing to comply with the judicial decisions and statutes of the Commonwealth of Virginia as mandated by 28 U.S.C. § 2072, 28 U.S.C. § 1738, as well as the *Erie* doctrine, by refusing to consider in any manner Rodriguez's substantive Virginia statutory property right in his Virginia Attorney's Lien, and in his right to protect his business and profession from n on going business conspiracy. Also the effective

result of the Fourth Circuit and District Court's unpublished decision is to establish the "Rodriguez Exception" to Virginia's Attorney's Lien and business conspiracy statutes, in violation of Rodriguez's right to due process and equal protection of the federal and state code and the Constitution, thus the petition for a writ of certiorari should be granted.

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Admission to the Bar of
The United States Supreme Court Bar 1992

LAW OFFICES OF RODRIGUEZ & SILBLEY L.L.P.
2304 Farrington Avenue
Alexandria, Virginia 22303-1520
E-Mail: isidoror@EarthLink.net
(703)960-0225

ADDENDUM

SSA ENTITIES VENTURE ORGANIZATION STRUCTURE

Summary of SSA Entities